

REMARKS

Applicants have carefully reviewed the Application in light of the Office Action dated January 26, 2005. Claims 1-25 are pending and stand rejected. Applicants amended Claim 1, 9, 17, and 23 and added Claims 26 and 27. For the reasons provided below, Applicants respectfully traverse these rejections and the assertions and holdings therein and submit that the pending claims are allowable over the current rejections. Therefore, Applicants respectfully request reconsideration and favorable action in this case.

Section 101 Rejections

The Office Action rejects Claims 9-16 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

The patent laws define patentable subject matter as “any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereto.” See 35 U.S.C. § 101. When an abstract idea is reduced to a practical application, the abstract idea no longer stands alone if the practical application of the abstract idea produces a useful, concrete and tangible result. This then satisfies the requirements of 35 U.S.C. § 101. *See In re Alappat*, 33 F.3d 1526, 31 U.S.P.Q. 2d 1545, 1558 (Fed. Cir. 1994); *see also State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 47 U.S.P.Q. 2d 1596, 1601-02 (Fed. Cir. 1998) and www.uspto.gov/web/menu/pbmethod/trangmaterials.ppt. While an abstract idea by itself may not satisfy the requirements of 35 U.S.C. § 101, an abstract idea when practically applied to produce a useful, concrete, and tangible result satisfies 35 U.S.C. § 101. *See AT&T Corp. v. Excel Comm. Inc.*, 172 F.3d 1352, 1357, 50 U.S.P.Q. 1447, 1452 (Fed. Cir. 1999) (stating that as technology progressed, the CCPA overturned some of the earlier limiting principles regarding § 101 and announced more expansive principles formulated with computer technology in mind); *see also In re Musgrave*, 431 F.2d 882, 167 U.S.P.Q. 280 (CCPA 1970) (cited by the Federal Circuit in *AT&T Corp.*, 172 F.3d at 1356). Thus, producing a useful, concrete, and tangible result is the key to patentability according to *State Street* and other applicable case law.

Applicants respectfully submit that, for example, Claim 9 produces a useful, concrete, and tangible result. “Only when the claim is devoid of any limitation to a practical application in the

technological arts should it be rejected under 35 U.S.C. 101.” (M.P.E.P. § 2106). Indeed, a method or process remains statutory even if some or all of the steps therein can be performed in the human mind, with the aid of the human mind, or because it may be necessary for one performing the method or process to think. *See In re Musgrave*, 431 F.2d at 893, 167 U.S.P.Q. at 289. Claims 9 recites “Software for agent-based monitoring of network devices.” Therefore, the claims produce a useful, concrete, and tangible result. Accordingly, network administration is one practical application of the present claims. As such, the aspects claimed in Claims 9-16 are not merely abstract ideas as suggested by the Examiner.

For at least the reasons discussed above in regard to Claim 9, Applicants respectfully request that Examiner's rejection of Claims 9-16 under 35 U.S.C. § 101 be withdrawn.

Section 112 Rejections

The Office Action rejects Claim 23 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants amend Claim 23 to correct this typographical error. Accordingly, Applicants respectfully request withdrawal of this rejection.

Section 102 Rejections

The Office Action rejects Claims 1, 4-9, 12-17, and 20-25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,816,898 (“*Scarpelli*”). However, Applicants submit that *Scarpelli* merely teaches dumb agents that rely on a script-based program to monitor and collect data and, thus, fails to teach or suggest various aspects of the present claims.

For instance, independent Claim 1 recites, in part, “selecting one of a plurality of agent templates based on the associated device class of the selected network device ... instantiating an agent object based on the agent template, the agent object operable to monitor hardware characteristics of the network device.” The Office Action equates the script-based program of *Scarpelli* with the “agent” recited by Claim 1. But the script-based program is not instantiated based on an agent template associated with a class of network device. The script-based program is merely copied from a previous version that does not include information associating it with the device class of the network device. *See Scarpelli*, 7:15-21. In fact, the user provides this information (*e.g.*, types, names, IP addresses) only after the script-based program is copied for

use with a particular network device. *See id.*, 7:23-24. The script-based program may be used locally by the network monitoring and management system or remotely by an agent running on the network device. In the case that a remote agent is used in network monitoring, *Scarpelli* teaches that an administrator copies the script-based program into a directory on the remote device. *See id.*, 8:39-41. After the script is copied onto the remote device, the script-based program is registered with the network monitoring and management system. *See id.*, 8:44-46. Only after registration does the administrator provide information that the script-based program may use in connection with the device such as name, type, inputs and outputs of the new service monitor, and others. *See id.*, 8:49-52; 7:23-27. In other words, *Scarpelli* teaches associating the script-based program with the class of the network device after registration with the network monitoring and management system. *See id.* Thus, *Scarpelli* fails to teach or suggest selecting an agent template based on an associated device class. Accordingly, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependents.

Independent Claims 9, 17, and 25 include certain analogous aspects to Claim 1 discussed above. Therefore, these claims are allowable for reasons analogous to those discussed above in connection with Claim 1. Claims 12-16 and 20-24 each depend from one of independent Claims 9 and 17 and are thus also patentable over the current rejections.

Section 103 Rejections

Claims 2, 3, 10, 11, 18, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Scarpelli* in view of U.S. Patent No. 6,795,403 ("*Gundavelli*"). Each of these depend from one of independent Claims 1, 9, and 17. As discussed above, independent Claims 1, 9, and 17 are allowable over *Scarpelli*. The Office Action fails to cite any teaching or suggestion in *Gundavelli* involving the missing elements discussed above. Therefore, Claims 2, 3, 10, 11, 18, and 19 are allowable at least because they depend from one of allowable Claims 1, 9, and 17. Thus, Applicants respectfully request that these rejections be withdrawn.

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CONCLUSION

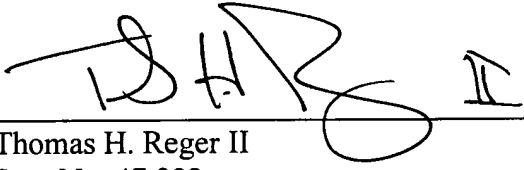
Applicants have now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all Claims. In addition, Applicants have included an Information Disclosure Statement.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicants hereby request a telephone conference with the Examiner and further request that the Examiner contact the undersigned attorney to schedule the telephone conference.

Enclosed is a check in the amount of \$100 for the excess claim fees. No other fees are believed to be due. However, please apply any deficiencies or any other required fees or any credits to deposit account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,

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